



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

May 17, 2019

Alex Ringler
Emerald BioEnergy
2279 County Road 156
Cardington, Ohio 43315

**Re: Emerald BioEnergy
Notice of Violation (NOV)
NOV
401 Wetlands
Morrow County
DSW401196272**

Subject: Notice of Violation / Resolution of Violation

Dear Mr. Ringler:

Ohio EPA, Division of Surface Water (DSW), conducted an inspection of a property located at 2277 – 2281 County Road 156 (Morrow County Parcel ID R41-001-00-123-00) in Cardington, Morrow County, Ohio on April 2, 2019. Mr. Rich Oberfield, a contracted operator for Renergy, Inc., accompanied Ms. Hardesty during the site inspection. As was discussed, the goal of our inspection was to investigate a complaint alleging that unauthorized impacts to waters of the state may have occurred and to determine your facility's compliance with Ohio's environmental laws and regulations. The complaint alleged that a small dam was built across a tributary to Whetstone Creek at the approximate latitude\longitude 40.4407, -82.9690.

During the April 2, 2019 site visit, Ohio EPA did observe a small earthen dam which had been placed below the ordinary high water mark of a tributary at the approximate location specified in the complaint. Mr. Oberfield confirmed that the dam had recently been constructed in order to provide a source for water to be pumped to a nearby lagoon on the property. During the April 2, 2019 inspection, the earthen dam appeared to have been partially removed and/or washed out by recent heavy rain, and water was observed being pumped out of the tributary upstream of the dam and into an adjacent lagoon. A small area of the stream bank and bed had been excavated to allow for desired placement of the pump tubing. Ms. Hardesty explained that Ohio EPA and the US Army Corps of Engineers regulate fill placed below the ordinary high water mark of the tributary (stream), a surface water of the state and of the United States, and that the dam should be removed since it was not permitted. Ms. Hardesty discussed the need to avoid using heavy machinery in the tributary and clarified that only incidental fallback from excavation of the earthen material would be acceptable during removal of the dam. Ms. Hardesty also discussed the importance of avoiding excessive excavation during future operations that could create erosion and cause degradation to the tributary from elevated turbidity and/or siltation, and which could result in a storm water violation.

Following the site inspection, Ms. Hardesty reviewed photographs and written documentation demonstrating restoration of the resource, which were provided in an email received from Ashleigh Lemon, Communications and Sustainability Specialist for Renergy, Inc., on Wednesday, April 3, 2019. Ms. Hardesty also reviewed photographs and communication demonstrating restoration of the resource, which were provided by Betsy VanWormer, with Ohio EPA Division of Surface Water, from a site inspection conducted on April 8, 2019.

I have reviewed the documentation provided and have determined that Emerald BioEnergy has now resolved all violations discovered during the April 2, 2019 inspection outlined in the NOV dated April 11, 2019. To ensure that all the violations have been addressed, I have included Emerald BioEnergy's response for both violations and their status.

Resolution of Violation

1. **ORC Section 6111.04 (A)(1)**: No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

The violation to ORC Section 6111.04 (A)(1) occurred due to the earthen fill placed in the stream to create the dam, which is considered other wastes.

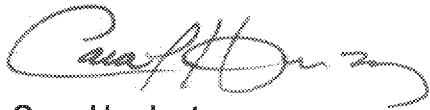
Federal Law: Section 401 and 404 of the Federal Water Pollution Control Act requires anyone who wishes to discharge dredged or fill material into the waters of the United States, regardless of whether on private or public property, to obtain a Section 404 permit from the U.S. Army Corps of Engineers (Corps) and a Section 401 Water Quality Certification (WQC) from the Ohio EPA.

Resolution: On 4/3/2019 Ohio EPA received photo documentation that everything had been restored in an email from Ashleigh Lemon. Ms. Lemon's email stated that the dam had been removed. On 4/8/2019 Betsy VanWormer visited the site. Ms. VanWormer provided photo documentation and communicated to Ms. Hardesty that no dam was observed during the 4/8/2019 site visit. Therefore, the violations to ORC Section 6111.04 (A)(1) and Federal Law have both been abated.

This letter provides additional clarification for what Ohio EPA considers to be a violation under ORC Section 6111.04 (A)(1) than the NOV/ROV letter to Emerald BioEnergy dated April 30, 2019, and replaces that letter. Please note that this does not preclude the Director from seeking administrative or civil penalties pursuant to Ohio Revised Code section 6111.09 for the violations noted in the April 11, 2019 NOV letter. The decision on whether to pursue or decline to pursue such penalties regarding these violations is dependent on several factors, one of which is the company's future compliance with Ohio EPA regulatory requirements.

Should you have any questions, please contact me at (614) 644-2143 or via email at cara.hardesty@epa.ohio.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cara Hardesty', with a stylized flourish at the end.

Cara Hardesty
Environmental Specialist
Division of Surface Water
401/Wetlands/Mitigation Section
Central Office

ec: Ashleigh Lemon, Renergy, Inc.
Cari Oberfield, Renergy, Inc.
Scott Sheerin, DSW, CO
Matt Lamoreux, DSW, CO
Teresa Spagna, Department of the Army, Huntington District, Corps of Engineers
Betsy VanWormer, DSW, CO